

# MEMORANDUM

Agenda Item No. 8(C)(1)

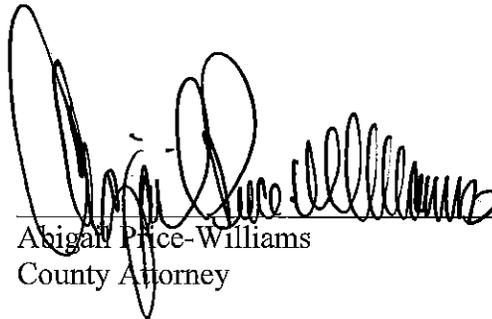
**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** July 6, 2016

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution authorizing waiver of formal bid procedures pursuant to Section 5.03(d) of the Home Rule Charter and Section 2-8.1(b) of the Code by a two-thirds vote of the Board members present to approve an Operating and Management Agreement with Fantasy Theatre Factory, Inc. for the management and operation of the NW 7th Avenue theater; approving a \$379,000.00 Grant Award Agreement to Fantasy Theatre Factory, Inc. for operational support for the theater to be funded from the Department of Cultural Affairs' proprietary funds; and authorizing the County Mayor to execute such contracts and to exercise all provisions contained therein

The accompanying resolution was prepared by the Department of Cultural Affairs and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.



Abigail Price-Williams  
County Attorney

APW/smm

# Memorandum



**Date:** July 6, 2016

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

**Subject:** Resolution Approving an Operating and Management Agreement with and a Grant of \$379,000.00 to Fantasy Theatre Factory, Inc. for the 7<sup>th</sup> Avenue Transit Village Theater Project

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## **Recommendation**

It is recommended that the Board of County Commissioners (Board) waive competitive bid procedures pursuant to Miami-Dade County Code Section 2-8.1 and Section 5.03D of the Home Rule Charter to approve an Operating and Management Agreement between Miami-Dade County and Fantasy Theatre Factory, Inc. by a two-thirds vote of the Board members present, and that the Board approve a \$379,000.00 grant to Fantasy Theatre Factory, Inc. for the operation of the 7<sup>th</sup> Avenue Transit Village Theater to be funded from proprietary revenues included in the Department of Cultural Affairs' FY 2015-16 budget.

## **Scope**

The 7<sup>th</sup> Avenue Transit Village project and the theater, which is a component within the overall Transit Village, are located in District 3, which is represented by Commissioner Audrey Edmonson. The programs offered by both Fantasy Theatre Factory and the theater's resident company, The M Ensemble Company, will have community wide impact beyond the District's boundaries.

## **Fiscal Impact / Funding Source**

A funding allocation of \$379,000.00 of proprietary funds is included in the Department of Cultural Affairs' (Department) approved FY 2015-16 budget for the operation of the 7<sup>th</sup> Avenue Transit Village Theater. This funding will help Fantasy Theatre Factory cover the theater's forecasted operational costs for its inaugural season. Fantasy Theatre Factory will be responsible for all costs related to the operations, programming, and maintenance of the theater, and the County will have no responsibility for the operational costs of the theater beyond the grant funds.

## **Track Record/Monitoring**

Miami-Dade County has a track record of partnering with not-for-profit cultural organizations for the successful management and operation of some of our community's most significant cultural facilities, such as HistoryMiami and the Adrienne Arsht Center for the Performing Arts of Miami-Dade County, among others. Michael Spring, Senior Advisor to the Mayor and Director of the Department, will be responsible for working with Fantasy Theatre Factory in implementing the terms of the agreement and the grant.

## **Background**

The Building Better Communities General Obligation Bond (BBC-GOB) Program approved by voters in 2004 included a \$5 million allocation for the Carver Theater project. The Carver Theater, a privately owned facility, is closed and, based on a site visit by the Department, would need extensive rehabilitation to convert it into a viable cultural facility. Because the acquisition of the property and the required capital work to reopen the theater was estimated to be in excess of the GOB funding allocation, the funding

earmarked for the Carver Theater project was reallocated to the 7<sup>th</sup> Avenue Transit Village, a public-private partnership development across the street from the Carver Theater site and specifically located at 6101 NW 7<sup>th</sup> Avenue, Miami, Florida, 33127.

A significant modification of the Carver Theater project was approved by the Board on October 4, 2011 via resolution R-755-11. It authorized the transfer of funds from the Carver Theater project to the NW 7<sup>th</sup> Avenue Transit Village Theater project, a mixed-use transit-oriented development on 2.48 acres of County-owned property located on the south-east quadrant of NW 62 Street and NW 7<sup>th</sup> Avenue. The project consists of a transit hub and bus station, residential housing, retail/commercial space, a multi-purpose theater, and a multi-level parking garage. On March 1, 2011, the Board authorized the selection of Carlisle Development Group, LLC as the developer for the 7<sup>th</sup> Avenue Transit Development Project, the execution of a ground lease for the property, and the assignment of the lease agreement from Carlisle Development Group, LLC to CDG Seventh Avenue Holdings, LLC via resolution R-138-11. On September 4, 2013, the Board authorized the assignment from Carlisle Development Group, LLC and its subsidiaries to Atlantic | Pacific Community Housing Development, LLC via resolution R-716-13. The Theater Property is subject to a Sub-sublease agreement between Seventh Avenue I, Ltd., (Sublessor) and Miami-Dade County through the Department as Sublessee.

The overall Transit Village project was designed by Zyscovich Architects and developed by Atlantic Pacific. The Department has worked closely with the architect and the developer, providing input at key milestones of the project regarding theater design and operations to ensure that the theater is of the highest quality and functionality given the limited budget. The resulting facility is one that the entire team can be proud of and will be a great asset to the community. Similar care has been placed in identifying an operator and resident company for the facility. The synergy between Fantasy Theatre Factory and The M Ensemble Company, two of South Florida's most outstanding performing arts companies, will establish the working relationship for the use of the 7<sup>th</sup> Avenue Transit Village Theater facility.

It is in the best interest of the County to enter into an operating and management agreement with Fantasy Theatre Factory as the operator of the 7<sup>th</sup> Avenue Theater and to establish The M Ensemble as the Theater's Resident Company. The successful operation of County facilities by non-profit cultural organizations requires that the selected arts groups have the specialized qualifications that enable them to understand and manage facilities to achieve the programming and community goals that guided their development. The 7<sup>th</sup> Avenue Theater was developed to serve families and children and to celebrate the culture of the community through theater and the performing arts. Fantasy Theatre Factory has a longtime track record of providing original, high quality educational and professional theater arts programs for children and families of all cultures and backgrounds throughout Miami-Dade County, has solid management and facility operational skills, and has established staff to quickly and efficiently take on the operations of the theater. The M Ensemble Company has an extensive history in promoting, cultivating, and preserving African-American culture by staging award-winning productions and developing new work by African-American playwrights that reflect the African-American experiences. This unique partnership is built on the understanding that Fantasy Theatre Factory will use the theater as its administrative home base for the development of its shows and for productions, and The M Ensemble Company will be the theater's Resident Company, developing and presenting its annual season of theatrical productions for the benefit of the residents and visitors to Miami-Dade County.

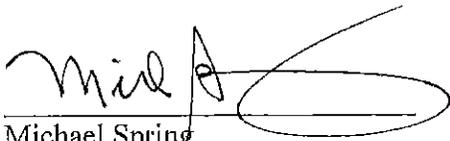
Through the Operating and Management Agreement with Miami-Dade County, Fantasy Theatre Factory will assume the day-to-day operational responsibilities for the theater, and use it for its administrative home, rehearsals, and performances. The M Ensemble Company will be the theater's resident company,

having certain rights and responsibilities for the use of the facility for developing and presenting its entire season annually. Other key features of the Operating and Management Agreement include:

- Term: 30 years and may be renewed for up to two (2) additional 30-year terms;
- Scope: Theater building, including auxiliary spaces (front of house, backstage, administrative offices, rehearsal rooms, closets, etc.) and 40 parking spaces in the adjacent parking garage allocated to the theater;
- Insurance: In addition to Worker's Compensation Insurance, General Liability Insurance, and Automobile Liability Insurance, Fantasy Theatre Factory shall be responsible for the cost of the annual Property Insurance premiums allocated to the theater;
- Repairs and maintenance: The County will be responsible for structural repairs to the roof and envelope of the building, subject to annual budgeted allocations adopted by the Board. Fantasy Theatre Factory will be responsible for overall maintenance, cleaning, and upkeep of building systems and utilities, and shall contribute to the maintenance and repair of the parking garage in an amount proportionate to the number of spaces assigned to the theater;
- Termination: either party may terminate the agreement for convenience upon 90 days prior written notice; and
- Exhibit A: Resident Company Agreement between Fantasy Theatre Factory and The M Ensemble Company outlining the terms of the partnership between the two (2) companies and the terms specific to the usage of the theater for performances, classes, workshops, etc.

Fantasy Theatre Factory will provide the staffing support for the operation of the theater and will be responsible for maintaining the facility on a day-to-day basis. The Department had projected "in-house" annual operating costs in excess of \$600,000.00 for the facility. By partnering with a cultural not-for-profit organization, the operational cost to the County will be substantially reduced. The Department's FY 2015-16 budget includes a \$379,000.00 allocation for the operation of the 7<sup>th</sup> Avenue Transit Village Theater, which will be granted to Fantasy Theatre Factory to augment its own funds to operate and maintain the theater pursuant to the Grant Award Agreement recommended for approval in this item.

- Attachments: Attachment 1: Operating and Management Agreement Between Miami-Dade County and Fantasy Theatre Factory, Inc.  
Exhibit A – Resident Company Agreement Between Fantasy Theatre Factory and The M Ensemble Company  
Attachment 2: Community-Based Cultural Facility Grant Award Agreement

  
Michael Spring  
Senior Advisor, Office of the Mayor

**OPERATING AND MANAGEMENT AGREEMENT BETWEEN  
MIAMI-DADE COUNTY AND  
FANTASY THEATRE FACTORY, INC.**

This Operating and Management Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by and between MIAMI-DADE COUNTY, FLORIDA, (the "County"), a political subdivision of the State of Florida, and FANTASY THEATRE FACTORY, INC., a not for profit Florida corporation, ("Fantasy Theatre Factory" and jointly with the County referred to herein as "Parties").

**WITNESSETH:**

Whereas, Seventh Avenue I, Ltd., a Florida limited partnership ("Sublessor") and Miami-Dade County, a political subdivision of the State of Florida, through its Department of Cultural Affairs, have entered into a thirty (30) year sub-sublease ("Theater Sub-Sublease") for the theater portion of the 7th Avenue Transit Village project for recreational, educational and cultural purposes; and

Whereas, the County desires to contract with Fantasy Theatre Factory for the operations, programming and maintenance of the theater portion of the 7th Avenue Transit Village project, located at NW 7th Avenue and 62nd Street, and comprised of the theater, its auxiliary spaces (front-of-house, backstage, administrative offices, rehearsal rooms, closets, etc.), ("Theater") along with the forty (40) parking spaces in the adjacent parking garage allocated to the theater (together the "Theater Property"); and

Whereas, the Parties are entering into an operating agreement in order to set forth the Parties' respective rights and obligations with respect to the operation and programming of the Theater, development of educational and community programs, and facilitating the long-term use of the Theater by The M Ensemble Company, Inc. ("The M Ensemble") as the Resident Theater Company of the Theater to develop and present its annual season of theatrical productions; and

Whereas, Fantasy Theatre Factory has a longtime track record of providing original, high quality educational theater and professional theater arts programs for children and families of all cultures and backgrounds throughout Miami-Dade County; and

Whereas, The M Ensemble has an extensive history in promoting, cultivating and preserving African-American culture by staging award-winning productions and developing new work by African-American playwrights that reflect the African-American experiences; and

Whereas, Fantasy Theatre Factory will assume all day-to-day operational responsibilities for the Theater, and will be using it for its administrative home, rehearsals and performances and through a Resident Company Agreement, facilitating The M Ensemble's use of the Theater, as Resident Theater Company, to establish a reliable and recognizable base for rehearsing and presenting its annual season for the benefit of residents of and visitors to Miami-Dade County; and

Whereas, Fantasy Theatre Factory has signed the attached Resident Company Agreement with The M Ensemble to establish the partnership and define the working relationship for the use of the Theater ("Attachment A" to this Agreement) which may be revised and amended solely by the mutual agreement of Fantasy Theatre Factory and The M Ensemble and provided that any and all revisions and amendments must be consistent with, and always subject to, this Agreement and the Theater Sub-Sublease; and

Whereas, Fantasy Theatre Factory will own improvements to the Theater that it makes that are not intended to be permanent; and

Whereas, Fantasy Theatre Factory will operate the Theater with a balanced annual budget, utilizing earned revenue and contributed income, along with state, federal and private funds so to minimize the operational reliance on funds from Miami-Dade County or any agency or instrumentality thereof, except as may be approved by the Board of County Commissioners through the County's annual budget, annual competitive grants programs, and a grant allocation to Fantasy Theater Factory for the operation of the Theater; and

Whereas, the terms and conditions of these professional management services and operating obligations to be provided and undertaken by Fantasy Theatre Factory to the County need to be defined and stated as set forth in this Agreement,

Now therefore, in consideration of the mutual promises and obligations contained herein, the Parties wish to enter into the following terms and conditions of this Agreement:

## **A. GENERAL TERMS**

### **A.1 RECITATIONS INCORPORATED**

The recitations stated above are incorporated into, and become a part of, this Agreement as if fully set forth herein.

### **A.2 PARTIES**

The parties to this Agreement are Miami-Dade County, a political subdivision of the State of Florida, ("County") and Fantasy Theatre Factory, Inc., a not-for-profit Florida corporation, ("Fantasy Theatre Factory").

### **A.3 SCOPE OF AGREEMENT**

This Agreement shall encompass all matters relating to the services to be provided and the obligations to be performed by Fantasy Theatre Factory to the County and the County's obligations to Fantasy Theatre Factory in connection with the management and operations of the Theater and the Theater Property. Fantasy Theatre Factory's obligations and rights under this Agreement shall be limited to the Theater building including auxiliary spaces (front of house, backstage, administrative offices, rehearsal rooms, closets, etc.) and the forty (40) parking spaces in the adjacent parking garage allocated to the theater. Fantasy Theatre Factory shall have no responsibility, obligations or rights to use, operate, manage, maintain, occupy or otherwise possess the balance of the 7<sup>th</sup> Avenue Transit Village Project beyond the Theater (except to maintain the grounds immediately surrounding the Theater as set forth in Section C:2.4 herein).

### **A.4 TERM AND OPTIONS TO RENEW**

The term of this Agreement is for a period of thirty (30) years, commencing with the Effective Date. This Agreement may be renewed for up to two additional thirty (30)-year terms, all subject to mutual agreement by the County and Fantasy Theatre Factory. Any additional terms shall run consecutive from the prior term. This Agreement may be terminated before the end of the initial or renewal terms pursuant to the provisions set forth herein.

### **A.5 CLAIMS**

In the event of third party claims brought against either the County or the Fantasy Theatre Factory in connection with matters arising under this Agreement, each party will be responsible for its own acts and omissions. Fantasy Theatre Factory agrees to indemnify the County for any loss which the County incurs as a result of the acts or omissions of Fantasy Theatre Factory.

**A.6 THIRD-PARTY BENEFICIARIES**

This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties, with the exception of The M Ensemble, pursuant to Attachment "A." This Agreement does not create nor establish any third party beneficiaries.

**A.7 NON-DISCRIMINATION POLICY**

Fantasy Theatre Factory shall abide by all applicable federal, state, and local mandates with regard to its employment hiring practices, promotions, use or rental of the Theater, or in any other respect; must provide equal access and equal opportunity in employment and services; and shall not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity, gender expression, physical ability, or status as a victim of domestic violence, dating violence, or stalking; all in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Chapter 11A of the Code of Miami-Dade County, Florida.

**A.8 CORPORATION AS INDEPENDENT CONTRACTOR AND ITS PERSONNEL**

Fantasy Theatre Factory is, and shall be, in the performance of all services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed under this Agreement shall at all times, and in all places, be subject to Fantasy Theatre Factory's sole direction, supervision, and control. No employee of Fantasy Theatre Factory shall be an employee of the County. Fantasy Theatre Factory shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Fantasy Theatre Factory's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

**A.9 PUBLIC RECORDS**

Documents pertaining to obligations and responsibilities of Fantasy Theatre Factory in carrying out the terms of this Agreement are subject to public records law. Pursuant to Florida Statutes 119.0701(2), Fantasy Theatre Factory agrees to comply with Florida's public records law, specifically to: (a) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service (use, operation and/or management of the Theater); (b) provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Florida Statutes Chapter 119.07, et seq., or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of Fantasy Theatre Factory upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.

The County acknowledges that certain records of Fantasy Theatre Factory or information relating to the use, management or operation of Fantasy Theatre Factory and the Theater (including but not limited artistic programming areas such as agreements with artists and arts organizations and for private sector philanthropic support and fundraising), may not be public records, may be considered trade secrets information that is proprietary and confidential, or may otherwise be exempt from disclosure under applicable public records laws. The County shall notify Fantasy Theatre Factory if the County receives a request for disclosure of any information that Fantasy Theatre Factory has informed the County that it reasonably believes is trade secret information, or that is otherwise exempt from disclosure, so that Fantasy Theatre Factory may vigorously initiate or defend any claims or disputes arising from efforts by other entities to cause such information to be disclosed. The County shall have no liability for any disclosure (a) which the County determines in good faith is required by applicable law, or (b) of information the County had not been advised was trade secret or exempt information.

#### **A.10 RECORDS**

Fantasy Theatre Factory shall keep its financial books and records in accordance with generally accepted accounting principles. All books and records of Fantasy Theatre Factory, financial or otherwise, shall be kept in Miami-Dade County, Florida under the custody and control of Fantasy Theatre Factory. The County shall have a right to audit and inspect all books, records and accounts of Fantasy Theatre Factory relating to its use, operations and/or management of the Theater at all times during the term of this Agreement and for a period of three (3) years after the expiration of this Agreement. All bank accounts and deposits of Fantasy Theatre Factory shall be in institutions located within Miami-Dade County, Florida. Failure by Fantasy Theatre Factory to comply with any provision of this Section shall be cause for termination of this Agreement.

#### **A.11 ASSIGNMENT, SUBCONTRACTING AND SUCCESSORS**

Fantasy Theatre Factory shall not assign or subcontract this Agreement or any portion thereof, nor any property associated with this Agreement, without the prior written approval of the County, specifically through its Board. Any unapproved assignment or subcontract shall be grounds for immediate termination of this Agreement. To the extent that the County approves of any assignments and/or subcontracts, it is understood and agreed that all assignees and subcontractors shall be subject to all of the terms and conditions of this Agreement and that Fantasy Theatre Factory shall continue to remain responsible and liable for all obligations under this Agreement and for all actions of its assignees and/or subcontractors. This provision shall not limit the authority of Fantasy Theatre Factory to enter into the Resident Company Agreement with The M Ensemble (Attachment A) and agreements that a non-profit theater company utilizes for the professional management of a theater, including but not limited to concession agreements, agreements with vendors for the maintenance and repair of the facility, rental or license agreements for the temporary use of space in the Theater.

#### **A.12 DEBT**

The Theater Property and its contents owned by the County may not be used to secure any debt and Fantasy Theatre Factory is expressly prohibited from mortgaging, pledging, using as collateral or security, or otherwise encumbering in any manner the Theater Property, including the contents therein owned by the County. County consent required under this section may be withheld for any reason within the sole and absolute discretion of the Board of County Commissioners. Fantasy Theatre Factory will not incur any debt that requires or seeks a pledge of funding support from the County.

#### **A.13 COUNTY INSPECTION AND RIGHT OF ENTRY**

The County shall have the authority to make inspections of the Theater Property and Fantasy Theatre Factory and its operations, along with any and all equipment, furnishings, fixtures, intellectual property, and/or improvements thereof to determine whether Fantasy Theatre Factory is operating in compliance with the

terms and provisions of this Agreement. The County shall have the right to enter the Theater Property to make emergency repairs, alterations, replacements, or improvements, as the County deems necessary, but the County assumes no obligation to make any such repairs, alterations, replacements or improvements, other than those expressly and specifically provided for in this Agreement.

## **B. THE THEATER FACILITY**

### **B.1 CHANGES OR ADDITIONS BY THE COUNTY**

Provided the County provides Fantasy Theatre Factory with prior written notice, the County may, at any time, and from time to time, unilaterally: (a) make or permit changes or revisions to the structure of the Theater, the Theater Property and/or the surrounding grounds, including but not limited to: parking, walkways, sidewalks, pathways, driveways, green space, and additions, expansions, alterations and/or rearrangements of the Theater; and (b) make or permit any changes to any sign affixed to the exterior of the Theater. Should, for any reason, the County elect to perform any repairs or alterations to the Theater Property, there shall be no allowance nor reimbursement to Fantasy Theatre Factory for any loss or diminution of its income and revenue arising from any interruption of its business nor shall there be any liability on the part of the County by reason of inconvenience, annoyance or injury to business arising from the County making repairs, alterations, additions, improvements, restorations or replacements in or to the Theater Property, or to any portion thereof, or to the fixtures, appurtenances, or equipment thereto. The County agrees, however, that any such repairs, alterations, additions, improvements, restorations or replacements shall be made with a minimum amount of inconvenience to Fantasy Theatre Factory, and that the County will diligently proceed therewith to completion.

### **B.2 IMPROVEMENTS BY FANTASY THEATRE FACTORY**

#### **B.2.1 County Approval**

Any permanent improvements, changes, or alterations to the interior, non-structural portions of the Theater Property contemplated by Fantasy Theatre Factory shall be submitted in writing for review and approval by the County Mayor, or his designee and by the Sublessor. Fantasy Theatre Factory agrees to provide the County with copies of any and all plans and specifications pertaining to such improvements at least sixty (60) days prior to seeking approval of such plans and specifications from the appropriate building department, and/or any other governmental permitting or regulatory entity or agency having jurisdiction. Fantasy Theatre Factory shall not make any changes, alterations or improvements to the exterior or the structure of the Theater Property.

#### **B.2.2 Quality of Improvements**

Fantasy Theatre Factory shall cause any and all improvements to be performed competently and in a good and workmanlike manner in compliance with all applicable Laws and by duly qualified and licensed person(s) or entities, using first grade materials, and performed to completion without unnecessary interference with, or disruption to the nearby property owners and/or neighbors.

#### **B.2.3 Fantasy Theatre Factory's Procurement Policy**

Within ninety days (90) of the execution of this Agreement, Fantasy Theatre Factory shall adopt a procurement policy (the "Procurement Policy") for the purchase of goods or services, including without limitation, professional services and capital improvements for the Theater Property. The Procurement Policy shall promote the transparency, efficiency and fairness of the contracting of Fantasy Theatre Factory, and shall promote the best value for the Theater Property, all consistent with the best interest of the Theater Property. Fantasy Theatre Factory shall submit the Procurement Policy to the County for review and approval by the County Mayor or Mayor's designee. Once approved, Fantasy Theatre Factory shall, at all times, comply with the Procurement Policy and shall submit any proposed amendments thereto to the County for its

review and approval through the County Mayor or Mayor's designee. Failure of Fantasy Theatre Factory to comply with the requirements of this Section and the Procurement Policy, and any purchase made or contract executed in violation of the Procurement Policy or this Agreement shall be considered a material breach of this Agreement.

The Procurement Policy shall at all times comply with all provisions of applicable law, including those governing the use, construction, maintenance and improvement of public facilities, and at a minimum, and without limitation, shall provide:

- (a) Fantasy Theatre Factory shall not lease, convey or transfer the Theater Property, or any portion thereof, without the express, written and prior approval of the County through its Board of County Commissioners;
- (b) the purchase of architecture, engineering or landscape architecture services, or any other services covered under the Consultants Competitive Negotiation Act, Section 287.055 of the Florida Statutes, shall be done in compliance with all of the provisions of that law when funded in whole or in part with County or other agency funds as defined in the law;
- (c) bidding for construction on the Theater Property shall be governed by the provisions of Section 255.20 of the Florida Statutes and Fantasy Theatre Factory shall competitively select any contractor in accordance with the provisions of Section 255.20 of the Florida Statutes when the estimated value of the work exceeds the thresholds set forth in such law;
- (d) a payment and performance bond or alternative form of security shall be obtained by Fantasy Theatre Factory for any and all construction on the Facility when the cost of such improvements exceed \$200,000.00 as required under Section 255.05 of the Florida Statutes and shall name the County and Fantasy Theatre Factory as beneficiaries thereof, as joint obligees;
- (e) contracts for the design and construction of the Theater Property shall comply with the requirements of the County Code governing small business enterprises, including but not limited to the requirement that all design, construction and/or construction management packages be submitted to the County's Small Business Development ("SBD") office for review for the application of the County's CSBE, SBE, and CBE measures in accordance with Sections 2-10.4.01, 10-33.02, and 2-8.1.1.1 of the County Code and the Corporation shall require that all of its consultants, contractors, subconsultants and subcontractors comply with all measures set by SBD;
- (f) all construction contracts shall comply with the requirements of, and procedures contained within, Section 2-11.16 of the County Code relating to Responsible Wages and Benefits, including the Wage and Benefit Schedule;
- (g) contracts for the construction of the Theater Property shall comply with applicable County requirements relating to contractor's workforce, including the hiring of personnel from Designated Target Areas pursuant to Section 2-17.01 of the Code of Miami-Dade County, and the education and hiring requirements of Section 2-11.17 of the Code which seeks to promote the employment opportunities of local residents;
- (h) all construction contracts shall comply with the County's Sustainable Buildings Programs, as set forth in Section 9-71, et. al. of the County Code and Implementing Order ("IO") 8-8; and

(f) all contracts for the design and construction of Theater Property shall comply with the County's Art in Public Places Program, as set forth in Section 2-1-1.15 of the County Code, IO 3-1-1, and the Dade County Guide to AIPP.

**B.2.4 Requirements for Consultant and Contractor Agreements**

All contracts with contractors and design professionals for improvements, repairs, replacements, and/or renovations to the Theater Property shall be in writing, shall contain terms and conditions consistent with all applicable laws and with the terms of this Agreement, shall expressly list the County as an intended third-party beneficiary to such contract, and shall require that the contractor/consultant and all of its subcontractors/subconsultants indemnify the County in the same manner and to the same extent that the Fantasy Theatre Factory indemnifies the County herein. Fantasy Theatre Factory shall provide a copy of each such contract to the County upon the County's request.

**B.2.5. Ownership of Plans**

All construction documents, plans, specifications, drawings, models, samples and the like produced or developed in connection with the planning, design and construction of the Theater Property or any portion thereof are and/or shall be, as the case may be, the sole property of the County, subject to the right of Fantasy Theatre Factory to utilize same during the term of this Agreement. Fantasy Theatre Factory shall provide the County with as-builts for any construction, renovation, repair, improvements and/or additions undertaken during the term of this Agreement.

**B.2.6. Liens**

Fantasy Theatre Factory shall cause any construction, renovation, repair, improvements and/or additions to the Theater Property to be constructed free and clear of any and all liens, encumbrances, security interests, pledges, claims in, to, against or in any way applicable to any portion of the Theater Property ("Liens"). In the event a Lien is filed on the Theater Property, Fantasy Theatre Factory shall cause said Lien to be satisfied or transferred to appropriate bond within 30 days following the recording of such Lien. If Fantasy Theatre Factory does not satisfy or transfer to appropriate bond any such Lien within 30 days of recording, the County shall have the right, but not the obligation to cause the Lien to be released by any means the County deems proper, including, without limitation, payment of the Lien. All reasonable sums paid and expenses incurred by the County in connection with releasing a Lien, including, without limitation, reasonable attorneys' fees and costs, shall be payable by Fantasy Theatre Factory to the County upon demand plus interest at the Prime Rate computed from the date any such sum was paid by the County. In addition, Fantasy Theatre Factory shall indemnify, defend and hold harmless the County with respect to all Liens on the Theater Property incurred or permitted by Fantasy Theatre Factory if same are not satisfied or transferred to appropriate bond within 30 days of recording.

**B.2.7 Payment for Improvements**

Fantasy Theatre Factory shall implement County-approved improvements at its sole cost and expense and shall promptly pay all persons or entities furnishing labor and material with respect to any work performed by Fantasy Theatre Factory and/or its contractor, and shall obtain and deliver to the County "releases" or waivers of liens from all parties doing work on or about the Theater Property, along with an affidavit from Fantasy Theatre Factory stating that all bills and/or invoices have been paid with regard to such work and that there are no outstanding obligations owed with respect to any such work.

**B.3 FURNISHING, FIXTURES, AND EQUIPMENT INSTALLED BY FANTASY THEATRE FACTORY**

Fantasy Theatre Factory shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Theater that have not been installed by the County. All furnishings, fixtures and equipment acquired for the Theater shall be of a high quality, and as good as or better than that what is found at similar facilities. Fantasy Theatre Factory shall afford the County the opportunity to review and comment upon in

advance the selection of all furnishings, fixtures and equipment for the Theater. Fantasy Theatre Factory shall obtain the written approval from the County for any alterations or modifications to the Theater necessary for the installation of any furnishings, fixtures, and/or equipment. Following the installation of any additional equipment, furnishing, fixtures, and improvements which the County shall review from time to time, Fantasy Theatre Factory shall provide to the County a statement setting forth a complete description of the specific equipment, furnishings, fixtures, and/or improvements and the date upon which the installation of such equipment, furnishings, fixtures, and/or improvements were installed and/or completed, and their respective costs. Fantasy Theatre Factory agrees that all equipment, furnishings, fixtures, and improvements provided shall meet or exceed the requirements of all applicable building, fire, pollution, and other related codes. Upon the expiration or early termination of this Agreement, Fantasy Theatre Factory reserves the right to remove the furnishings and equipment provided and paid for by Fantasy Theatre Factory with non-County funds, so long as the removal of such furnishings and equipment will not result in damage to the Theater Property, and so long as the furnishings and equipment are not otherwise subject to any type of lien, encumbrance, and/or obligation under this Agreement.

#### **B.4 SIGNS**

Fantasy Theatre Factory shall maintain all signage in good condition and appearance. Any changes, additions, and/or alterations to permanent exterior sign(s) on the Theater Property, including, but not limited to, any monument, sign, marquee, etc., must first be approved in writing by the County and the Sublessor, and any cost of painting, production, and/or installation shall be paid by Fantasy Theatre Factory. Said permanent signage, including any decoration, lettering, advertising material, or any other thing of any kind or nature, must also be pre-approved by the County and by the Sublessor, in addition to any and all other governmental authorities having jurisdiction over the Theater Property. Fantasy Theatre Factory shall submit detailed drawings to the County and Sublessor of any proposed signage or change of signage. The County's approval must be by the County Mayor, or the County Mayor's designee. Any damage or unsightly condition caused to the Theater Property because of, or due to, said signs, shall be satisfactorily corrected or repaired by Fantasy Theatre Factory, to the County's satisfaction, at Fantasy Theatre Factory's sole cost and expense.

### **C. OPERATIONS AND MANAGEMENT OF THE THEATER**

#### **C.1 COUNTY RIGHTS AND OBLIGATIONS**

##### **C.1.1 County-funded Repairs**

The County shall provide funding for structural repairs, as may be required, to the roof and exterior envelope of the Theater, subject to an annual budgeted allocation adopted by the Board of County Commissioners in the Board's sole and absolute discretion. Repairs required to the roof and/or the exterior envelope of the Theater required as a result of acts of Fantasy Theatre Factory, its employees, vendors, licensees, etc., or that are the result of Fantasy Theatre Factory's failure to perform routine maintenance of these building systems, shall be the responsibility of Fantasy Theatre Factory. Fantasy Theatre Factory shall provide the County with a recommended capital repair budget and necessary list of repairs as part of its annual budget submittal to the County as set forth in Section C.2.

##### **C.1.2 County Inspections and Right of Entry**

The County shall have the authority to make periodic reasonable inspections of the Theater and its operations, along with any and all equipment, furnishings, fixtures and/or improvements during the normal operating hours thereof to determine whether Fantasy Theatre Factory is operating in compliance with the terms and provisions of this Agreement. The County shall have the right to enter the Theater Property to make emergency repairs, alterations, replacements, or improvements, as the County deems necessary, but the County assumes no obligation to make any such repairs, alterations, replacements, or improvements, other

than those expressly provided for in this Agreement.

## **C.2 FANTASY THEATRE FACTORY RIGHTS AND OBLIGATIONS**

### **C.2.1 Permitted Uses and Equal Access**

The County grants to Fantasy Theatre Factory the exclusive rights to, and Fantasy Theatre Factory agrees to, use, manage, and operate the Theater as a facility primarily for the presentation of performing arts, cultural, recreational, and educational activities including The M Ensemble's use of the Theater, as Resident Theater Company. Fantasy Theatre Factory acknowledges and agrees that the Theater shall be utilized for the benefit of the public and community interest and welfare. Fantasy Theatre Factory agrees to keep the Theater open and properly and safely maintained for all Miami-Dade County residents and to allow all Miami-Dade County residents equal access and use of the Theater and not discriminate when charging facility admission fees. Fantasy Theatre Factory shall not use, operate, manage, suffer the use of or permit the use of the Theater or any part thereof in any manner, or anything done therein or brought or kept therein, which would in any way: (i) violate any legal requirement or insurance requirements; or (ii) impair any of the County's right or interest in the Theater Property.

### **C.2.2 Commencement of Obligations**

Fantasy Theatre Factory shall commence operations and management of the Theater on the Effective Date. Fantasy Theatre Factory shall thereafter continuously and uninterruptedly use, operate and maintain the Theater for the purposes outlined in this Agreement until the expiration or earlier termination of this Agreement. Fantasy Theatre Factory shall not discontinue its operations for any consecutive period of thirty (30) days or more without the prior written consent of the County via its County Mayor or Mayor's designee. Any failure of Fantasy Theatre Factory to continue its operations, as set forth herein, shall be deemed an event of default and, as a result thereof, this Agreement may be terminated.

### **C.2.3 Quality of Services**

Fantasy Theatre Factory shall operate and manage the Theater on behalf of the County using the highest degree of professionalism. Fantasy Theatre Factory shall have at the Theater adequately trained personnel and staff to provide services to customers, users, patrons, visitors and/or guests. Fantasy Theatre Factory shall have sole artistic control over its theater programming, educational and outreach activities and other events that it presents. If any governmental approvals, licenses or permits shall be required for the proper and/or lawful conduct, operations and/or management of the Theater, then Fantasy Theatre Factory shall, at its expense, duly procure and thereafter maintain such license or permit and shall at all times comply with the terms and conditions of such permit or license.

### **C.2.4 Maintenance and Utilities**

C.2.4.1 All repairs, maintenance, refurbishment and redecoration of the Theater shall be the obligation of Fantasy Theatre Factory, excepting those items outlined in Section C.1, which shall be the responsibility of the County. Fantasy Theatre Factory shall provide and shall be solely responsible for the cost and expense to use, keep, maintain, and repair the Theater, including its immediately surrounding grounds. Fantasy Theatre Factory's obligations shall include, but not be limited to: maintenance, cleaning and upkeep of all building systems, janitorial services, pest extermination, sewer, trash and garbage collection services, utilities, electric, fire alarm, cable, phone, Internet, and security services, etc. Upon failure of Fantasy Theatre Factory to maintain the Theater as required by this Agreement, the County may, after thirty (30) days' written notice to Fantasy Theatre Factory from the County Mayor or Mayor's designee, or sooner if deemed an emergency, enter the Theater and perform any maintenance or repair necessary to safeguard the County's interest and shall bill the cost thereof to Fantasy Theatre Factory.

C.2.4.2 Pursuant to the County's Sub-Sublease agreement with Seventh Avenue J, Ltd., the County shall

contribute to the on-going maintenance, insurance and utility expenses associated with the parking garage an amount equal to 25.6% of the annual expenses incurred by Seventh Avenue J, Ltd., for the maintenance of the garage. Fantasy Theatre Factory shall be responsible for such payment as part of the operation and maintenance of the theater. Detailed invoices are expected to be received by the County from Seventh Avenue J, Ltd. within 60 days following the end of each calendar year (the first partial calendar year shall be combined with the first full calendar year). Payment to the County shall be made within 30 days of Fantasy Theater Factory receiving a copy of the detailed invoice from the County.

#### **C.2.5 Pro-Forma and Annual Budget**

Fantasy Theatre Factory shall prepare a detailed operating budget for the first year of operations of the Theater which shall be subject to the review by the County Mayor, or the Mayor's designee. Fantasy Theatre Factory shall submit to the County by February 1<sup>st</sup> of each year the entire annual operating budget for the Theater, including all classes of revenues and expenditures, for the coming fiscal year, including funds requested from the County to help address operational costs and a recommended capital repair budget and necessary list of repairs in accordance with Section C.1.1. County funding support is subject to annual budgeted allocation(s) as may be available and adopted by the Board of County Commissioners in the Board's sole and absolute discretion. Fantasy Theatre Factory shall submit to the County annual reports and annual independent audits conducted by a Certified Public Accountant on or before December 31<sup>st</sup> of each year for the most recently completed fiscal year. Annual reports shall consist of (a) a summary of the programming and marketing activities of Fantasy Theatre Factory; (b) a balance sheet; (c) a statement of revenues and expenditures; and (d) a statement of changes in fund balance since the prior submittal.

#### **C.2.6 Fees and Revenues**

The County shall not be entitled to keep any revenues received by Fantasy Theatre Factory from the rental of spaces in, or use of, the Theater, the sale of tickets by Fantasy Theatre Factory, revenues from concession sales, and any other revenue generated by Fantasy Theatre Factory. Neither the County nor Fantasy Theatre Factory shall be entitled to any rental, management or operating fees from the other for the use, operation and management of the Theater, nor shall the County establish any admission charges or fees for the Theater. Fantasy Theatre Factory shall establish ticket prices, concession sales rates and all other fees and rates incidental to the operation of the Theater consistent with sound management practices and with the objectives of maintaining a balanced budget and presenting programs and activities that are affordable to the public.

#### **C.2.7 Operational Responsibilities**

Fantasy Theatre Factory shall provide all theater and property management, accounting, advertising, public relations and legal services required for the operations of the Theater. It is the intent of the Parties that Fantasy Theatre Factory will have authority and responsibility over the day-to-day operation of the Theater and all activities occurring there, and that it shall use the revenue generated by the use of the Theater and funds requested from the County to help address operational costs to pay the expenses associated with the operations of the Theater. Fantasy Theatre Factory shall apply for available state, federal and private grant money to help pay for these expenses. Fantasy Theatre Factory shall have the exclusive authority to determine space allocation and scheduling within the Theater. All contracts, licenses and agreements entered into by Fantasy Theatre Factory in connection with the management of the Theater shall be in its own name.

#### **C.2.8 Obligations and Debt**

Fantasy Theatre Factory shall be responsible for the collection of unpaid obligations due as a result of the use or operation of the Theater and the County shall have no responsibility therefore. Fantasy Theatre Factory shall not cause any liens or encumbrances to be placed on the Theater Property and shall not be entitled to use the Theater Property or any fixtures, furniture or equipment of the Theater provided and/or paid for by the County as security for any loan or indebtedness.

#### **C.2.9 Taxes**

Fantasy Theatre Factory acknowledges and agrees that if at any time during the term of this Agreement, or any renewal or extension thereof, a tax, charge, levy, imposition, or excise is placed or otherwise imposed on the Theater, then Fantasy Theatre Factory shall be solely responsible for the payment and satisfaction of any such tax, charge, levy, imposition and/or excise. Fantasy Theatre Factory acknowledges and agrees that it shall be solely responsible for any and all applicable sales and use taxes arising out of performances or events at the Theater and all other applicable taxes relating to its operation and management of the Theater and it shall also be responsible for all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind or nature, owned by or placed in, upon or about the Theater by Fantasy Theatre Factory.

#### **C.2.10. Assets: Ownership, Care, Disposal**

All equipment, furniture and other items of personal property at the Theater (1) paid for with County funds, (2) necessary for the proper functioning of a theater or exhibition hall, or (3) listed by the County on its inventory of County property as a County asset, shall be owned by the County. Fantasy Theatre Factory has the exclusive right to use all such existing equipment, furniture, and other items of personal property at the Theater during the Term of the Agreement.

C.2.10.1: Fantasy Theatre Factory shall not sell or otherwise dispose of any County property; provided that, with respect to County personal property, Fantasy Theatre Factory may sell or dispose of the same if such property has been replaced by Fantasy Theatre Factory with property which is either the equivalent or an upgrade of the replaced property and such newly purchased property shall at all times be considered County property.

C.2.10.2: Fantasy Theatre Factory shall maintain a detailed inventory of all County-owned personal property and equipment in the Theater in accordance with applicable law, including, but not limited to, the applicable provisions of Chapter 274, Florida Statutes and Sections 691-73.001-691-73.006, Florida Administrative Code, and Administrative Order 8-2, all as amended from time to time (the "Inventory"), and deliver a copy of the Inventory to the County. The Inventory shall be maintained and updated (annually) throughout the term, and copies of the updated Inventory shall be provided to the County upon the County's request. Upon the expiration or earlier termination of this Agreement, Fantasy Theatre Factory and the County shall prepare a final Inventory, and Fantasy Theatre Factory shall explain to the County any discrepancies between the most recent Inventory (prior to termination or expiration) and the final Inventory. To the extent the final Inventory discloses missing items (other than items that became unusable, were consumed or otherwise disposed of in accordance with the terms of this Agreement during the last year of the term, or were reported to law enforcement as stolen) the County may, at its sole discretion, require Fantasy Theatre Factory to pay the County an amount equal to the depreciated value of the missing items. The County shall mark all items of inventory in accordance with applicable law, including, but not limited to, the applicable provisions of Section 691-73.004, Florida Administrative Code, as amended from time to time. The County's personal property and equipment shall be disposed of in accordance with Section 2-11.2.1 of the Code and Administrative Order 8-2.

#### **C.2.11 Security for Theater Events**

Fantasy Theater Factory shall, at its cost, procure and provide adequate security to protect the safety of theater patrons, guests, and invitees of the Theater during all events which are

open to the public and occurring at the Theater Property, whether in the form of on-duty police, off-duty police or private security patrol. In no event shall the County have any responsibility or liability for harm to Theater patrons, tenants, guests, invitees, etc., or damage to property, occurring as a result of Fantasy Theater Factory's failure to provide security which is adequately and reasonably designed to ensure the safety of the public.

## **D. INSURANCE AND INDEMNIFICATION**

### **D.1 ACTS OF OTHERS**

The County shall not be responsible or liable to Fantasy Theatre Factory, or to those claiming by, through or under Fantasy Theatre Factory, for any loss or damage which may be occasioned by or through the acts or omissions of persons coming to or upon the Theater or the surrounding grounds for any loss or damage resulting to such entity or to Fantasy Theatre Factory for themselves or for personal property from actions or activity by such person(s) or entities at the Theater Property. Further, the County shall not be responsible or liable to Fantasy Theatre Factory, or to those claiming by, through or under Fantasy Theatre Factory, for any loss or damage which may be occasioned or caused by actions or inactions which are the direct or indirect cause of any breaking, bursting, stoppage, or leaking of water, gas, sewer, electrical, telephone or other utility pipes and/or lines.

### **D.2 INSURANCE REQUIREMENTS FOR FANTASY THEATRE FACTORY**

D.2.1 Throughout the term of this Agreement, Fantasy Theatre Factory shall maintain in force the following insurance and shall furnish to Miami-Dade County, Department of Cultural Affairs, 111 N.W. 1st Street, Suite 625, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of Fantasy Theatre Factory as required by Florida Statute 440.

B. Commercial General Liability Insurance on a comprehensive basis including products liability and liquor liability, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

D.2.2 Miami-Dade County will not be responsible for damage to contents owned by Fantasy Theater Factory or improvements to the Theater that Fantasy Theater Factory makes that are not intended to be permanent.

D.2.3 All Policies must be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by Miami-Dade County.

D.2.4 All Policies must include a Waiver of all Rights of Subrogation against Miami-Dade County.

D.2.5 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The Company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

D.2.6 Pursuant to the County's Sub-Sublease agreement with Seventh Avenue I, Ltd., the County shall pay that portion of the annual insurance premium on the Center that is allocable to the insurance value of the theater. Fantasy Theatre Factory shall be responsible for the payment of such insurance payment as part of the operation and maintenance of the theater. Payment to the County shall be made within 60 days of Fantasy Theater Factory receiving a copy of the detailed invoice for the annual premium from the County.

### D.3 INDEMNIFICATION

Fantasy Theatre Factory shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by Fantasy Theatre Factory or its employees, agents, servants, partners, principals or subcontractors. Fantasy Theatre Factory shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Fantasy Theatre Factory expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Fantasy Theatre Factory shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The County does hereby agree to indemnify and hold harmless Fantasy Theatre Factory to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify Fantasy Theatre Factory from any liability or claim arising out of the negligent performance or failure of performance of Fantasy Theatre Factory or any unrelated third party.

### E. FANTASY THEATRE FACTORY EVENTS OF DEFAULT

Any of the following situations shall be an event of Default:

- (1) A material failure to observe any provision of this Agreement;
- (2) Failure to properly or adequately maintain and secure the Theater;
- (3) Failure to remedy any condition posing a threat to the health or safety of the public;
- (4) Failure to provide annual seasons of quality theatrical and performing arts events and education and outreach activities for the benefit of the residents of and visitors to Miami-Dade County; provided, however, that Fantasy Theatre Factory shall not be held responsible for hurricanes, Acts of God, civil insurrections or

riots;

- (5) Failure of Fantasy Theatre Factory to remain solvent or to operate the Theater in a fiscally responsible manner; and/or
- (6) Failure of Fantasy Theatre Factory to observe any other covenant or obligation set forth in this Agreement or to operate and manage the Theater in compliance with all federal, state, and local laws.

## **F. TERMINATION**

### **F.1 TERMINATION FOR CONVENIENCE**

Fantasy Theatre Factory may terminate this Agreement for its convenience upon ninety (90) days' prior written notice to the County at any time after the Effective Date. The County, through the Mayor or the Mayor's designee, may terminate this Agreement for its convenience upon ninety (90) days' prior written notice to Fantasy Theatre Factory at any time after the Effective Date.

### **F.2 COUNTY TERMINATION FOR DEFAULT BY FANTASY THEATRE FACTORY**

If an event of Default as set forth in Article E has occurred and Fantasy Theatre Factory has not begun to cure the default within fifteen (15) days after the County furnishes written notice of the Default, then the County shall institute the Dispute Resolution Procedure described in Section F.3. If a resolution satisfactory to the County Mayor is not achieved as a result of the Dispute Resolution Procedure, then the County may terminate this Agreement upon sixty (60) days prior written notice to Fantasy Theatre Factory. Fantasy Theatre Factory may appeal this termination, within fifteen (15) days, to the Chief Judge of the 11th Circuit Court.

### **F.3 DISPUTE RESOLUTION PROCEDURE**

In the event the County and Fantasy Theatre Factory are unable to resolve their differences concerning any dispute or claim arising under or relating to the Agreement, except those that may arise pursuant to the provisions of Section A.7 of this Agreement relating to public records, (referred to as a "Dispute"), either Fantasy Theatre Factory or the County may initiate a dispute in accordance with the procedure set forth in this Section. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder. Pending final decision of a Dispute hereunder, Fantasy Theatre Factory shall proceed diligently with the performance of the Agreement.

Any and all Disputes shall be decided by a designee ("Hearing Officer") appointed by the Director of the Department of Cultural Affairs, or successor County Department ("Director"). The designee can be any individual selected by the Director, including but not limited to the Director himself, another County employee, an expert in the subject area of the Dispute, an attorney experienced in arbitrations, or a retired judge. The Director shall select and appoint the Hearing Officer upon a timely request made under this Section for the initiation of the Dispute.

As soon as practicable, the Hearing Officer shall adopt a schedule for Fantasy Theatre Factory and the County to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. Within 20 working days of the date on which such written submissions are filed, the Hearing Officer shall afford each party an opportunity to present a maximum of one hour of argument. The Hearing Officer may decide the Dispute on the basis of the affidavits and other written submissions if, in his opinion, there is no issue of material fact and the part is entitled to a favorable resolution pursuant to the terms of this Agreement. As part of such decision, the Hearing Officer shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Hearing Officer shall have the authority to rule on questions of law, including disputes over Agreement interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Hearing Officer is authorized by both parties to strike elements of claims

seeking relief or damages not available under the Agreement (such as, but not limited to, claims for lost profits, off-site overhead, loss of efficiency or productivity claims or claim's preparation costs) by summary disposition.

In the event that the Hearing Officer determines that the affidavits or other written submissions present issues of material fact, he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Hearing Officer at his reasonable discretion.

No formal discovery shall be allowed in connection with any proceeding under this Section. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this Agreement shall remain in force and effect throughout the proceeding. The Hearing Officer shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. The continued failure of a party to comply with the document inspection, examination, or submission requirements set forth in this Agreement shall constitute a waiver of that party's claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

The Hearing Officer shall issue a written decision within 15 working days after conclusion of any testimonial proceeding and, if no testimonial is conducted, within 45 days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or claims. The decision of the Hearing Officer shall be conclusive, final and binding on the parties.

If either party wishes to contest the decision of the Hearing Officer, such party may commence an action in a court of competent jurisdiction, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Hearing Officer's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

#### **F.4 EFFECT OF TERMINATION**

Upon termination, the Theater and all its fixtures, furnishings and equipment belonging to the County shall be returned to the care and custody of the County. All personal property and assets of Fantasy Theatre Factory shall be removed by Fantasy Theatre Factory from the Theater upon termination.

### **G. INSPECTOR GENERAL**

#### **G.1 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews on all County contracts, throughout the duration of said contracts. Upon written notice from the County, Fantasy Theatre Factory shall make available to the IG, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IG services, and under no circumstance shall Fantasy Theatre Factory's costs or expenses, be inclusive of any charges relating to these IG services. Any reasonable and necessary copies required by the IG shall be made at the IG's expense. The terms of this provision

herein, apply to Fantasy Theatre Factory, its officers, agents, and employees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of Fantasy Theatre Factory in connection with this Agreement. The terms of this Article shall not impose any liability on the County by Fantasy Theatre Factory or any third party.

#### **G.2 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. The IPSIG may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Parties in connection with this Agreement.

### **H. MISCELLANEOUS PROVISIONS**

#### **H.1 NOTICES**

When any notice is required to be given by this Agreement, it shall be delivered by certified mail, return receipt requested to the parties at the addresses listed below, or such other address as is furnished in writing to the other party:

To the County:  
Miami-Dade County

County Mayor  
111 N.W. 1 Street, Suite 2920  
Miami, Florida 33128

copy to:  
Miami-Dade County

County Attorney  
111 N.W. 1 Street, Suite 2920  
Miami, Florida 33128

To Fantasy Theatre Factory:

Chair/President, Fantasy Theatre Factory, Inc.  
6101 NW 7<sup>th</sup> Avenue  
Miami, FL 33127

#### **H.2 INDEPENDENT CONTRACTOR RELATIONSHIP**

The County and Fantasy Theatre Factory acknowledge and agree that they are independent entities and neither Fantasy Theatre Factory nor any of its employees or officers shall be considered employees, agents or officers of the County.

#### **H.3 COUNTY AS SOVEREIGN**

The Parties understand and expressly hereby agree that the Theater Property may be subject to various governmental considerations and approvals that are outside of the terms and conditions of this Agreement. Such considerations and approvals may be processed or considered by one or various agencies and/or departments of the County in the normal course of business for those agencies and/or departments. The parties agree that the County shall not be liable in any manner, whatsoever, to any other party or person for the exercise of its governmental authority, regulatory powers and/or police powers.

#### **H.4 RULES AND REGULATIONS**

Fantasy Theatre Factory will observe, obey, and comply with all rules and regulations adopted and/or implemented by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Fantasy Theatre Factory's operations

under this Agreement. Failure to do so will constitute a breach of this Agreement.

#### **H.5 HEADINGS**

The headings of the various paragraphs and sections, and the references to paragraphs and sections of this Agreement are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context, or intent of this Agreement, or any part or parts of this Agreement.

#### **H.6 ENTIRETY OF AGREEMENT**

This Agreement along with the documents referenced herein constitute the entire, fully integrated Agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the Parties with respect thereto. This Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida without application of conflict of laws principles.

#### **H.7 AMENDMENT**

This Agreement may be amended by written document approved by the Board of Directors of Fantasy Theatre Factory and approved by the Board of County Commissioners by Resolution duly adopted and executed by the County Mayor or Mayor's designee.

#### **H.8 NO WAIVER OF RIGHT TO ENFORCE**

The waiver by the County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. No covenant, term, or condition of this Agreement shall be deemed to have been waived by the County, unless such waiver is in writing by the County, and there shall not be any accord and satisfaction unless expressed in writing and signed by both the County and Fantasy Theatre Factory. Any waiver of any portion of this Agreement shall be evidenced in writing by the party that made such waiver.

#### **H.9 SAVINGS CLAUSE**

In the event any term or provision of this Agreement is determined by an arbitration panel, or appropriate judicial authority, to any extent, to be illegal, ineffective, unenforceable or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

#### **H.10 CHOICE OF VENUE**

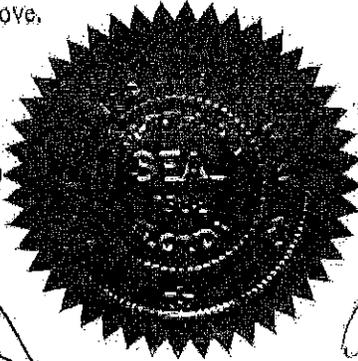
Any litigation between the County and Fantasy Theatre Factory relating in any way to this Agreement shall be brought and presented exclusively in a court located in Miami-Dade County, Florida.

#### **H.11 SURVIVAL**

The parties acknowledge that many of the obligations in this Agreement will survive the term, termination and/or cancellation hereof. Accordingly, the respective obligations of Fantasy Theatre Factory and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the Parties have set their hands and seals, and such of them as are corporations have caused these presents to be signed by their duly authorized officers as of the date first set forth above.

(corporate seal)



FANTASY THEATRE FACTORY, INC.

By: \_\_\_\_\_  
Producing Artistic Director

ATTEST:

By: \_\_\_\_\_  
Secretary

Legal sufficiency

\_\_\_\_\_  
County Attorney

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: \_\_\_\_\_  
County Mayor

ATTEST:

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

(SEAL)

Exhibit A

RESIDENT COMPANY AGREEMENT BETWEEN  
FANTASY THEATRE FACTORY and M ENSEMBLE COMPANY

Preamble

The spirit of this Agreement between two of South Florida's most outstanding performing arts companies is to establish a working relationship for the use of the 7<sup>th</sup> Avenue Theater facility ("the Theater"). The premise is that through an Operating and Management Agreement with Miami-Dade County, FANTASY THEATRE FACTORY will assume day-to-day operational responsibilities for the Theater, and use it for its administrative home, rehearsals and performances, and M ENSEMBLE will be the Theater's Resident Company, developing and presenting its annual season of theatrical productions. In addition, this partnership is built on the understanding that FANTASY THEATRE FACTORY will use the Theater as its administrative home base, for the development of its shows and for productions and M ENSEMBLE will use the Theater to establish a reliable and recognizable base for rehearsing and presenting its annual season. Both companies acknowledge the limitations of space in the Theater (for example, very limited storage space, no scene shop, etc.) and agree to work cooperatively to use the space within these and other limitations (for example, the need to mutually ensure the security of the Theater) in order to advance each organization's mission and goals. Both companies acknowledge that this agreement may be amended or revised based on experience using the theater and advancing their mutual goals.

Section I. General Terms of Partnership

- 1.1 The term of the Agreement is for a period of thirty (30) years, automatically and mutually renewable for two additional thirty (30) year periods.
- 1.2 FANTASY THEATRE FACTORY shall manage the allocation and scheduling of all spaces (performance and support spaces) within the Theater;
- 1.3 M ENSEMBLE will be a Resident Company of the Theater; M ENSEMBLE will have the first right to schedule space within the Theater for the presentation of its annual season of four (4) productions; this Resident Company status is defined as follows:
  - 1.03a Annually, M ENSEMBLE and FANTASY THEATRE FACTORY will meet during the first week of each October, one year in advance of the beginning of the next season (typically, the season is defined as the period between October 1<sup>st</sup> of one year and September 30<sup>th</sup> of the next), and M ENSEMBLE will have the first right to select the dates for the four (4) productions for its coming season. If these dates later change, M ENSEMBLE will be able to select alternate dates if the alternate dates are not already on hold by FANTASY THEATRE FACTORY or another presenter.
  - 1.03b It is understood that typically, each production by M ENSEMBLE is defined as evening and matinee shows presented over three (3) consecutive weekends (i.e., Thursday, Friday, Saturday and Sunday).

- 1.4 M ENSEMBLE will not be charged rent for the usage of any space within the Theater under the terms of this Agreement.
- 1.5 If M ENSEMBLE uses resources and services provided by FANTASY THEATRE FACTORY, M ENSEMBLE will be responsible for paying FANTASY THEATRE FACTORY for such resources and services, as outlined later in this Agreement. These fees will serve to offset FANTASY THEATRE FACTORY's expenses in providing access and/or services to M ENSEMBLE. FANTASY THEATRE FACTORY will not be generating a profit based on these fees; rather FANTASY THEATRE FACTORY will use the fees to cover the costs associated with the allocation of services to M ENSEMBLE.
- 1.6 FANTASY THEATRE FACTORY will provide M ENSEMBLE with access to one workstation with a dedicated telephone and data lines/or wifi within the Theater's administrative spaces. Typically, this workstation may be accessed anytime during the Theater's normal business hours, defined as 9AM-5PM, Monday - Friday, excluding federally recognized holidays and other days that the Theater may be closed (this information will be available via FANTASY THEATRE FACTORY's use of Google Calendars for Administrative Office Personnel). M ENSEMBLE and FANTASY THEATRE FACTORY may make mutually acceptable arrangements to keep the Theater's administrative offices open on other days/times. M ENSEMBLE may choose to keep a printer/copier and/or other equipment within its designated area for its exclusive use. Any sharing of office equipment or other office resources will require mutual agreement of FANTASY THEATRE FACTORY and M ENSEMBLE.
- 1.7 M ENSEMBLE shall provide FANTASY THEATRE FACTORY with any documentation, such as a certificate of insurance or personnel background checks, which may be required under the operating agreement for the Theater between FANTASY THEATRE FACTORY and Miami-Dade County.
- 1.8 M ENSEMBLE and FANTASY THEATRE FACTORY will develop a Resident Company Partnership Agreement that will cover the logistics and costs necessary for M ENSEMBLE to present each of its productions at the Theater. FANTASY THEATRE FACTORY will be responsible for establishing and implementing a ticketing system that will be used by both companies and other renters of the Theater. To ensure clear responsibilities for each of the parties, M ENSEMBLE and FANTASY THEATRE FACTORY will sign a Resident Company Partnership Agreement at least 30 days prior to show load-in and before any tickets go on sale for any given event.
- 1.9 M ENSEMBLE and FANTASY THEATRE FACTORY will work cooperatively to establish protocols for reasonable access to the Theater by M ENSEMBLE that addresses the issues of security and use and acknowledges that FANTASY THEATRE FACTORY has certain responsibilities for the security of the Theater in its role as the day-to-day administrator of the facility. Through the implementation of the terms contained in this document, FANTASY THEATRE FACTORY will facilitate the usage of the facilities by M ENSEMBLE at all agreed upon times.
- 1.10 M ENSEMBLE shall be responsible for the provision of any fees encountered by FANTASY THEATRE FACTORY due to M ENSEMBLE'S cancellation of any scheduled performance. For example, this includes fees associated with issuing ticket refunds, etc.

- 1.11 During the course of this agreement, FANTASY THEATRE FACTORY may adjust the fees described herein, and incorporated in the Resident Company Partnership Agreement, by giving 60 days advanced notice to M ENSEMBLE prior to the start of the new season. Adjustments to the fees will only rise in accordance with inflation and/or market conditions for securing professional personnel.

## Section 2. Terms Specific to Theater Performance Usage

- 2.1 M ENSEMBLE will pay the direct costs per performance to cover FANTASY THEATRE FACTORY's provision of house manager, box office staff, janitorial service, usher and security for all performances occurring at the Theater.
- 2.2 M ENSEMBLE will pay a Technical Production Fee equivalent to the number of hours worked by FANTASY THEATRE FACTORY Production Staff in providing access to the building during load-in, set up, tech rehearsals and load-out of M ENSEMBLE productions. M ENSEMBLE staff will be provided with time-sheets with sign-in and sign-out time for FANTASY THEATRE FACTORY Technical Production Staff Member for each production. The hourly rate will be set at the beginning of each season in July and incorporated into the Resident Company Partnership Agreement. The rate is \$15 per hour, per staff member for the 2015-16 season.
- 2.3 M ENSEMBLE shall provide to FANTASY THEATER FACTORY certificates of insurance for use of the Theater indicating that insurance coverage has been obtained which meets the requirements as outlined below:
- A. Worker's Compensation Insurance for all employees of M ENSEMBLE as required by Florida Statute 440.
  - B. Commercial General Liability Insurance on a comprehensive basis including products liability and liquor liability, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
  - C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
  - D. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by A.M. Best Company Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The Company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

- 2.4 M ENSEMBLE may elect to utilize FANTASY THEATRE FACTORY technical production staff for the provision of lights and sound, or may provide its own technicians for these roles. In the event M ENSEMBLE opts to use FANTASY THEATRE FACTORY staff to run lights and sound, M ENSEMBLE will pay a rate of \$100 per technician per show. In the event M ENSEMBLE opts to use its own technicians for the provision of lights and sound, M ENSEMBLE will sign a liability agreement agreeing to be held financially responsible for any damages caused by improper usage, handling or care of equipment. In the event that equipment is damaged, lost or otherwise rendered inoperable or substantially unusable, FANTASY THEATRE FACTORY will deduct the costs for repair from the net proceeds of M ENSEMBLE's production.
- 2.5 M ENSEMBLE will be guaranteed access to the performance space 2 weeks prior to show opening for set-up and technical rehearsals. Productions are expected to be cleared from the Theater within 5 days of production closing date.
- 2.6 M ENSEMBLE will have access to space within the Theater (1<sup>st</sup> floor studio or 2<sup>nd</sup> floor multipurpose room) for conducting rehearsals for its productions as well as for conducting auditions by providing FANTASY THEATRE FACTORY with at least 2 weeks' notice of the dates and times it wishes to utilize the space for these activities. For times outside of normal business hours, M ENSEMBLE will be responsible for paying for the hours of the FANTASY THEATRE FACTORY security personnel who will be present to facilitate access to the building during these pre-agreed upon times.
- 2.7 All productions must move into the Theater substantially complete. This means that sets must be substantially built, painted, and ready to be assembled in the space. This also means that productions must be rehearsed and ready for tech rehearsals. There is no access to scenic shop or building equipment. There should be no painting exclusive of minor touch-ups performed on site.
- 2.8 There is no storage space provided as part of this Resident Company partnership.
- 2.9 M ENSEMBLE will furnish FANTASY THEATRE FACTORY's Technical Production Department with a tech rider, indicating seating configuration desired, lighting requirements, show dates, times and approximate show running length at least 15 days prior to the first day of load-in.
- 2.10 FANTASY THEATRE FACTORY will provide the on-line ticketing portal as well as in-person box office staff for all events occurring at the Theater. Currently FANTASY THEATRE FACTORY utilizes Ovation Tix for on-line ticketing and for in person credit card processing. These services charge nominal fees which will be deducted from the net proceeds of each ticket purchased utilizing these methods of ticketing. FANTASY THEATRE FACTORY will provide M ENSEMBLE with a detailed breakdown of fees charged for each production which will appear on the final settlement sheet for each production.
- 2.09a As of 8/28/2015 the fees for Ovation Tix are as follows:
- Merchant Processing Fee for credit card transactions 3.75%
  - Web order fee (for customers purchasing tickets online) \$1.00 flat rate.
  - Phone order fee (for customers who purchase tickets through Ovation on the phone) \$1.00 flat rate.

- Tickets purchased in person at box office with either cash or credit or bought over the phone with box office are subject to a \$0.15 fee.

To summarize, a ticket purchased in person with cash at the box office would only be subject to a \$0.15 fee for in-person transactions utilizing Ovation Tix. A ticket purchased online with a credit card would be subject to a 3.75% merchant processing fee and a \$1.00 web order fee. A ticket purchased in person at the box office with a credit card would be subject to the 3.75% merchant processing fee and the \$0.15 fee for in person transactions utilizing ovation register.

These fees are subject to change as Ovation updates its fee structures.

- 2.11 All tickets will have a \$1.00 convenience fee charged to the patron that will be paid to FANTASY THEATRE FACTORY to support the establishment of a restricted building repairs fund.
- 2.12 All events must be ticketed, even those that are free events. All patrons must have a ticket to enter the Theater. The \$1.00 convenience fee applies to all tickets, with the exception of comp tickets.
- 2.13 M ENSEMBLE may delegate comp tickets as it sees fit. Lists of comps must be provided to FANTASY THEATRE FACTORY's box office staff no later than 1 hour prior to box office opening.
- 2.14 FANTASY THEATRE FACTORY will issue a settlement check and statement to M ENSEMBLE for the net proceeds of each production no less than 15 days after the load out of the production from the Theater. Net Proceeds is defined as the amount of money due to M ENSEMBLE after the deduction of fees to FANTASY THEATRE FACTORY and other fees as described in these terms. In the event there is a balance due from M ENSEMBLE it should be paid within 30 days from the date of load out.
- 2.15 In the event M ENSEMBLE holds performances on any federally recognized holiday the fees that may be due to FANTASY THEATRE FACTORY for the use of its staff and/or resources as outlined herein will be subject to a 1.5 (time and a half) surcharge.
- 2.16 FANTASY THEATRE FACTORY retains the right to use the theater space during times when M ENSEMBLE has a production installed, but is not in production and must notify M ENSEMBLE in advance of such use and be responsible to ensure that there is no impact to M ENSEMBLE's production (Ex. FANTASY THEATRE FACTORY can set up its set in front of M ENSEMBLE's set and conduct a morning program as long as it has everything cleared out of the way in time for M ENSEMBLE's show happening later that night.)
- 2.17 FANTASY THEATRE FACTORY shall be the sole vendor of concessions for the venue with the exception of M ENSEMBLE having the right to conduct its own opening night receptions as outlined herein.
  - 2.16a M ENSEMBLE may hold opening night receptions where M ENSEMBLE will be responsible for providing all concessions items, staffing and oversight; M ENSEMBLE will keep 100% of the proceeds from these opening night receptions.

- 2.16b. FANTASY THEATRE FACTORY will not provide concessions staff for the first night of any M ENSEMBLE performances unless notified at least two weeks in advance that M ENSEMBLE does not wish to conduct its own opening night reception.
- 2.18. FANTASY THEATRE FACTORY will provide profit sharing, minus costs, to M ENSEMBLE for concessions sold during M ENSEMBLE productions. Costs are defined as staff hours for obtaining concessions items, staff hours for selling concessions items, credit card processing fees for purchases and the costs to purchase concession items; after FANTASY THEATRE FACTORY recoups the costs, it will offer a 50/50 split of net proceeds of concessions items sold during M ENSEMBLE'S productions.
- 2.19. M ENSEMBLE may sell its non-food and drink related merchandise (tee-shirts, hats, etc.) during its performances.
- 2.20. FANTASY THEATRE FACTORY will utilize Square Register for concessions transactions. Square Register charges the following schedule of fees: 2.75% per swiped card entry or 3.75% + \$0.15 for manually entered card transactions.
- 2.21. M ENSEMBLE will be responsible for securing and obtaining accessibility modifications for its programs such as but not limited to ASL interpreters, assisted listening devices, open captioning, etc.

### Section 3. Terms for Usage of Space for Conducting Classes, Workshops, etc.

- 3.1. Throughout the season, M ENSEMBLE may request to hold space within the Theater's classrooms, meeting rooms or gallery by requesting the hold at least 15 days in advance of the first date of usage of those spaces. If the chosen dates are not already on hold by FANTASY THEATRE FACTORY or another presenter M ENSEMBLE will be guaranteed those hold dates. M ENSEMBLE may request these spaces up to 90 days prior to usage.
- 3.2. M ENSEMBLE will pay a setup/cleaning fee equal to the hours worked for FANTASY THEATRE Staff to set up each workshop class space utilized during regular business hours (Monday-Friday, 9AM-5PM). For night and weekend usage, the fee also will include payment of the hours of the security guard. Activities on federally recognized holiday dates will be subject to a 1.5 (time and a half) surcharge. The fees will be utilized to pay for FANTASY THEATRE FACTORY staff to provide access to the space, set up the space with tables, chairs, etc., and then clear the room at the end of the usage period and clean the room. It is understood that evening and weekend fees will be higher due to the fact that security will have to be provided during off hours and FANTASY THEATRE FACTORY staff will have to be present to provide access to the space during non-regular business hours.
- 3.3. M ENSEMBLE will be responsible for the collection of tuitions, staffing of instructors, etc. for all classes offered by M ENSEMBLE.
- 3.4. Any space usage that will include an audience attending to view a performance or exhibition will be subject to the schedule of fees outlined in the Terms Specific to Theater Performance Usage section of this agreement.

#### Section 4: Events of Default

4.1 Any of the following situations shall be an event of Default by either Party:

4.1a A material failure to observe any provision of this Agreement;

4.1b Failure to remedy any condition posing a threat to the health or safety of the public; annual seasons of quality theatrical and performing arts events and education and outreach activities for the benefit of the residents of and visitors to Miami-Dade County; provided, however, that FANTASY THEATRE FACTORY or M ENSEMBLE shall not be held responsible for hurricanes, Acts of God, civil insurrections or riots;

4.1c Failure of FANTASY THEATRE FACTORY or M ENSEMBLE to observe any other covenant or obligation set forth in this Agreement or to utilize, operate and/or manage the Theater in compliance with all federal, state, and local laws.

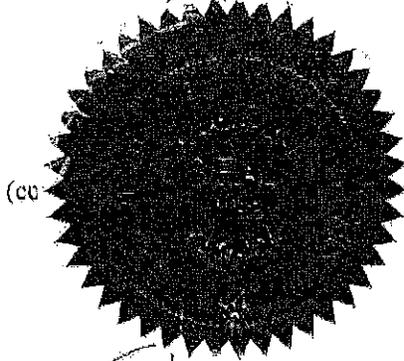
#### Section 5. Termination

5.1 FANTASY THEATRE FACTORY or M ENSEMBLE may terminate this Agreement for its convenience upon ninety (90) days' prior written notice at any time after the Effective Date.

5.2 In an event of Default as set forth in Section 4.1, either Party shall issue written notice of the Default to the other Party. If the other Party fails to begin to cure the default within fifteen (15) days after written notice of the Default has been furnished, then the first Party may institute the Dispute Resolution Procedure described in Section 5.3. If a resolution satisfactory is not achieved as a result of the Dispute Resolution Procedure, then this Agreement may be terminated upon sixty (60) days prior written notice to either Party.

5.3 Any and all Disputes shall be decided by a designee ("Hearing Officer") appointed by the Director of the Miami-Dade County Department of Cultural Affairs, or successor County Department ("Director"). The designee can be any individual selected by the Director, including but not limited to the Director himself, another County employee, an expert in the subject area of the Dispute, an attorney experienced in arbitrations, or a retired judge. The Director shall select and appoint the Hearing Officer upon a timely request made under this Section for the initiation of the Dispute.

IN WITNESS WHEREOF, the Parties have set their hands and seals, and such of them as are corporations have caused these presents to be signed by their duly authorized officers as of the date first set forth above.

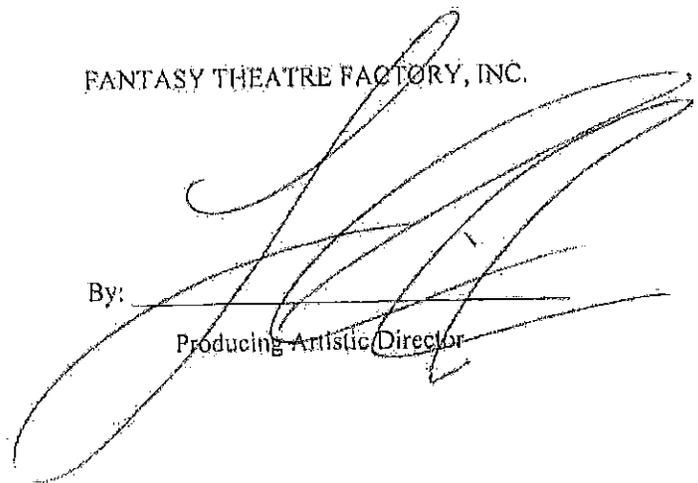


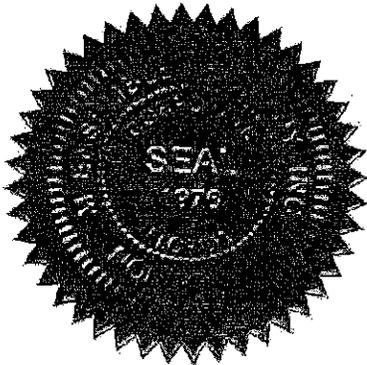
ATTEST:

By: \_\_\_\_\_

Secretary

FANTASY THEATRE FACTORY, INC.

By:  \_\_\_\_\_  
Producing Artistic Director

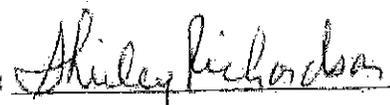


ATTEST:

By: \_\_\_\_\_

Secretary

THE M ENSEMBLE, INC.

By:  \_\_\_\_\_  
Executive Director

By:  \_\_\_\_\_  
Producer/ General Manager



MIAMI-DADE COUNTY DEPARTMENT OF CULTURAL AFFAIRS
CULTURAL FACILITY GRANT AWARD AGREEMENT

The Miami-Dade County Department of Cultural Affairs and Cultural Affairs Council, the Mayor and the Board of County Commissioners are pleased to announce that Miami-Dade County will award the grant described herein to the Fantasy Theatre Factory, Inc. (hereinafter referred to as the Grantee) in consideration for the Grantee's agreement to abide by all the following terms and considerations set forth in Articles I, II, III, IV, V & VI and the Exhibits herein referenced.

ARTICLE I - DESCRIPTION OF GRANT

- 1. Grantee: Fantasy Theatre Factory, Inc. (EIN# 59-2230097)
7069 SW 47th Street
Miami, Florida 33155
Facility: 7th Avenue Transit Village Theater
2. Total Amount of Grant: \$379,000
3. Project Description: Operations, Programming and Maintenance of the 7th Avenue Transit Village Theater
4. Itemized Budget: (See Project Budget Exhibit attached hereto.)
5. Grant End Date: December 31, 2016
6. Report Deadline: Final Report due within 45 days of Grant End Date

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

ATTEST:

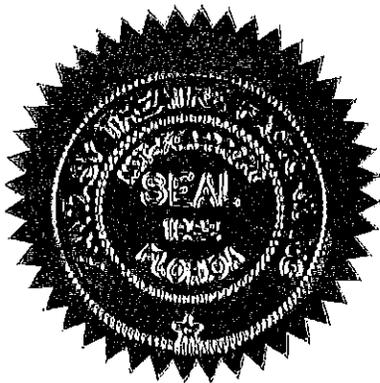
MIAMI-DADE COUNTY, FLORIDA by its BOARD OF COUNTY COMMISSIONERS on the

day of , 20

Clerk, Miami-Dade County Commission

County Mayor/ Designee

GRANTEE: Fantasy Theatre Factory
on the 15 day of April, 2016



By John Cassarino
Chairman or President

Type or Print Above Signature

By Clara E Arango
Treasurer / Chief Fiscal Officer

Type or Print Above Signature

By Larry Fields
Executive Director

Type or Print Above Signature

Approved for form and legal sufficiency:

Assistant Miami-Dade County Attorney

**MIAMI-DADE COUNTY DEPARTMENT OF CULTURAL AFFAIRS**  
**GENERAL TERMS AND CONDITIONS FOR FACILITY GRANT AGREEMENT (4/2016) – ARTICLES II, III, IV and V**

**ARTICLE II**

1. **Parties:** The parties to the Grant Award Agreement, which shall be referenced herein as the "Agreement," are the Grantee listed in Article I.1, and Miami-Dade County, Florida, a political subdivision of the State of Florida. The Home Rule Charter authorizes Miami-Dade County to provide for the uniform health and welfare of the residents throughout the County, and further provides that all functions not otherwise specifically assigned to others under the Charter, shall be performed under the supervision of the County Mayor or his designee. The County Mayor has delegated the responsibility of administering this grant to the Director of the Miami-Dade County Department of Cultural Affairs, who shall be referred to herein as the "Director."

2. **Amount and Payment of Grant Award:** The total amount of the grant is specified in Article I.2. By making this grant, Miami-Dade County assumes no obligation to provide financial support of any type whatever in excess of the total grant amount. Cost overruns are the sole responsibility of the Grantee. Grant funds will be supplied to the Grantee once the award is approved and subject to the conditions and limitations as outlined in the Agreement and its accompanying articles and attachments.

Miami-Dade County's obligation to pay the award under the Agreement is contingent upon an appropriation by the Miami-Dade County Mayor and the Board of County Commissioners and on the availability of funds. In the event that County funds on which the Agreement is dependent do not materialize or are withdrawn, the Agreement is terminated and the County has no further liability to the Grantee, beyond that already incurred by the termination date. In the event of a County revenue shortfall, the total grant will be reduced accordingly. Such termination or reduction of the total grant shall not affect the responsibility of the Grantee under the Agreement as to those funds distributed.

3. **Project Description:** The Grantee may use the grant only for the purposes which are specifically described in Article I.3, designated "Project." Any necessary changes in the scope of the project are cited in the attached Project Budget. Further, it is expressly understood and agreed that the Grantee's program(s) supported by these grant funds must be open and accessible to the public, provide public exposure and benefit the public unless otherwise noted under Article V, "Special Conditions," of the Agreement.

Amendments to this agreement and/or minor project revisions believed to be necessary for the purpose of completing the project, but which do not substantially alter the original project, its quality, impact, or benefit to the organization, the County or its citizens, must be submitted/requested in writing to the Director sufficiently prior to implementation of revisions for the Director's execution (in the case of an amendment) or approval (in the case of a revision). Minor revisions include, but are not limited to those affecting project scope, venue, artistic selections, program titles, timeframe and participants. The Director will make the final determination on revisions within fourteen (14) business days of the date of receipt of the request in the Department of Cultural Affairs' offices.

4. **Project Budget:** The Grantee agrees to demonstrate fiscal stability and the ability to administer grant funds responsibly and in accordance with standard accounting practices by developing and adhering to a project budget that is based upon reasonable revenue development and expenditures projected to accomplish the project covered under the Agreement. This budget is referenced in Article 1.4 and is attached to the Agreement as the Project Budget, and the Grantee agrees that all expenditures will be subject to the terms of the Agreement and will not significantly deviate from the attached Project Budget provided to the Miami-Dade County Department of Cultural Affairs. **The Grantee agrees and expressly understands that any grant budget revisions including line item changes necessary for the purpose of completing the project must be requested in writing to the Director for his consideration prior to the Grant End Date stated in Article 1.6 and that any requested changes may not exceed twenty-five percent (25%) of the total amount of the grant award.** The Director will approve or disapprove the Grantee's request in writing within fourteen (14) business days of the date of receipt of the request in the Department's offices.

5. **Grant End Date:** The Grantee shall encumber all grant and matching funds on or before the Grant End Date as outlined in Article I.6. Any grant funds not encumbered by the Grant End Date or for which a project extension has not been requested, or any encumbered funds not expensed within forty-five (45) days of the Grant End Date shall revert to the Department and the Agreement shall be terminated in accordance with Article II.14. A project extension may be requested in writing from the Director at least thirty (30) business days prior to the Grant End Date. The Director, at his discretion, may grant an extension of up to one (1) year of the Grant End Date so long as such extension will not significantly alter the project including its quality, impact, or benefit to the organization, the County or its citizens.

6. **Report Deadline:** To demonstrate that the Grantee has used the grant award for the project as approved (Article 1.3.) and the Itemized Project Budget (Article 1.4.) as attached to the Agreement as the Project Budget, and has met and fulfilled all requirements as outlined in the Agreement, and any other substantive materials as may be attached or included as a condition to this grant award, the Grantee must submit to the Director or his designee, a copy of the Grantee's Annual or Final Report and independent financial audit of the fiscal year encompassing the grant period, documenting that the Grantee is meeting or has fulfilled all project and financial requirements. This report is to be received by the Director or his designee by the date specified in Article 1.7. **The Grantee agrees and expressly understands that in making Final Report to the Department, any deviation from the grant expense budget attached to the Agreement as the Project Budget must be requested in writing to the Director for his consideration prior to the Grant End Date stated in Article 1.6 and that any requested changes may not exceed twenty-five percent (25%) of the total amount of the grant award.** The Director, at his sole discretion, may require the Grantee to submit interim reports demonstrating progress on the project and accounting for project expenses to date. The Director may also require that a compilation statement or independent financial audit encompassing the entire grant period and accounting for the expenditure of grant funds be prepared by an independent certified public accountant at the expense of the Grantee.

In the event that the Grantee fails to submit the required Final Report by the deadline date specified in Article 1.7., the Director may terminate the Agreement in accordance with Article 11.14. Further, the Director or his designee must approve this report before the Grantee is deemed to have met all conditions of the grant award.

7. **Program Monitoring and Evaluation:** The Director or his designee may monitor and conduct an evaluation of the Grantee's operations and the project for which this grant is provided, which may include visits by County representatives to: observe the project or Grantee's programs, procedures, and operations; discuss the Grantee's programs with the Grantee's personnel; and/or evaluate the public impact of these funded events and activities.

Upon request, the Grantee shall provide the Director with notice of all meetings of its Board of Directors or governing board, general activities and project-related events. In the event the Director or his designee conclude, as a result of such monitoring and/or evaluation, that the Grantee is not in compliance with the terms of the Agreement, is not fulfilling other program requirements or stipulations for which this Grant has been provided or for other reasons which significantly impact on the Grantee's ability to fulfill the conditions of this grant award, the Director or his designee must provide in writing to the Grantee, within thirty (30) days of the date of said monitoring/evaluation, notice of the inadequacy or deficiencies noted which may significantly impact on the Grantee's ability to complete the project or fulfill the terms of the Agreement within a reasonable time frame. If Grantee refuses or is unable to address the areas of concern within thirty (30) days of receipt of such notice, the Director, at his discretion, may take other actions, which may include the withholding, reduction or rescission of grant funds until such time as the Grantee can demonstrate that such issues have been corrected.

Further, in the event that the Grantee refuses or is unable to address the areas of concern and the grant award has been disbursed in full or in part, then the Director may request the return of the full or partial grant payment. At the Director's sole discretion, a Grantee found to be deficient or in default of a previous grant contract may be declared permanently ineligible to apply to the Department of Cultural Affairs' grants programs. Reinstating the Grantee's eligibility to apply is also at the Director's sole discretion, and may only be considered subsequent to all deficient areas on prior grants having been addressed to the satisfaction of the Director.

If Grantee is not in compliance with the conditions of any other County agreement, the Director, at his discretion, may take other actions, which may include the withholding, reduction or rescission of grant funds until such time as the Grantee can demonstrate that such issues have been corrected.

8. **Bank Accounts:** Monies received pursuant to the Agreement shall be kept in accounts in established Florida banks, credit unions or savings and loan associations whose identity shall be disclosed in writing, with the identity and title of individuals whom the Grantee authorizes to withdraw or write checks on grant funds from the banking institution identified on the "Bank Account Disclosure" form submitted by the Grantee. These accounts need not be accounts which are segregated from other accounts maintained by the Grantee. However, it is highly recommended that the Grantee maintain a separate account for these grant funds.

9. **Accounting and Financial Review:** The Grantee must keep accurate and complete books and records for all receipts and expenditures of this grant award and any matching funds required in conformance with reasonable general accounting standards. These books and records, as well as all documents pertaining to payments received and made in conjunction with this grant, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in Miami-Dade County in a secure place and in an orderly

fashion by the Grantee for at least two (2) years after: the Grant End Date specified in Article I.6.; the expiration of an extended grant period as approved by the Director; the completion of a County requested or mandated audit or compliance review; the conclusion of a legal action involving the grant award, the Grantee and/or project or activities related to the grant award.

The Director or his designee may examine these books, records and documents at the Grantee's offices or other approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice. Furthermore, the Director may, upon reasonable notice and at the County's expense, audit or have audited all financial records of the Grantee, whether or not purported to be related to this grant.

**10. Publicity and Credits:** The Grantee must include the following credit line in all promotional and marketing materials related to this grant including websites, news and press releases, public service announcements, broadcast media, event programs, and publications: **"With the support of the Miami-Dade County Department of Cultural Affairs and the Cultural Affairs Council, the Miami-Dade County Mayor and Board of County Commissioners."** The grantee must also use the County's logo in marketing and publicity materials, including but not limited to newsletters, press releases, brochures, fliers, websites or any other materials for dissemination to the media or general public. Please call the Department to request an electronic logo file or download it from our website ([www.miamidadearts.org](http://www.miamidadearts.org)).

**By accepting County funds, the grantee is required to recognize and acknowledge Miami-Dade County's grant support in a manner commensurate with all contributors and sponsors of its activities at comparable dollar levels.**

In addition, grantees receiving funds through the YEP, SAS-C and AKI grant programs must include The Children's Trust logo and the following statement in all materials related to the grant project, including but not limited to newsletters, press releases, brochures, fliers, websites or any other materials for dissemination to the media or general public:

**"The (insert event/program name) is funded by The Children's Trust. The Trust is a dedicated source of revenue established by voter referendum to improve the lives of children and families in Miami-Dade County by making strategic investments in their future."** To download an electronic version of The Children's Trust logo, please go to: [The Children's Trust Media Kit & Logos](#).

Note: In cases where funding by The Children's Trust represents only a percentage of the grantee's overall funding, the above language can be altered to read "The (insert event/program name) is funded in part by The Children's Trust..."

**11. Liability and Indemnification:** It is expressly understood and intended that the Grantee, as the recipient of grant funds, is not an officer, employee or agent of Miami-Dade County, its Board of County Commissioners, its Mayor, the Department of Cultural Affairs or the Cultural Affairs Council. Further, for purposes of the Agreement and the grant project or activity, the parties hereto agree that the Grantee, its officers, agents and employees are independent contractors.

The Grantee shall take all actions as may be necessary to ensure that its officers, agents, employees, assignees and/or subcontractors shall not act as nor give the appearance of that of an agent, servant, joint venturer, collaborator or partner of the Department of Cultural Affairs, the Cultural Affairs Council, the Miami-Dade County Mayor, the Miami-Dade County Board of County Commissioners, or its employees.

The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the project. The Grantee may subcontract as necessary to perform the services set forth in the Agreement, including entering into subcontracts with vendors for services and commodities, provided that it is understood by the Grantee that Miami-Dade County shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract, and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

The Grantee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentallties from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentallties may incur as a result of claims, demands, law suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the Grantee or its employees, agents, servants, partners, principals or subcontractors. The Grantee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County, where applicable including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The Grantee expressly understands and agrees that any insurance

protection required by the Agreement or otherwise provided shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the County or its officers, employees, agents and instrumentalities as herein provided.

**12. Assignment:** The Grantee is not permitted to assign this grant award or any portion thereof. Any purported assignment will render this grant null and void and the Grantee shall be subject to immediate rescission of the full amount of the grant award and reimbursement by the Grantee of its full value to the County.

**13. Compliance with Laws:** It shall be a contractual obligation of the Grantee hereunder, that during the term of the Agreement, the Grantee agrees to abide by and be governed by all applicable federal, state and county laws and the terms of grants made to Miami-Dade County and the Miami-Dade County Department of Cultural Affairs and Cultural Affairs Council, of which this grant is a sub grant, including, but not limited to the following Miami-Dade County Ordinances, Resolutions, sections of the County Code and federal laws:

- (a) County Ordinance No. 72-82 - Miami-Dade County's Conflict of Interest and Code of Ethics Ordinance - as amended, which is incorporated herein by reference as if fully set forth herein;
- (b) Section 2-8.1- of the Miami-Dade County Code - Ownership Disclosure;
- (c) County Ordinance No. 90-133- Amending Sec. 2-8.1; (d)(2) - Employment Disclosure;
- (d) Section 2-8.6 -of the County Code - Criminal Record;
- (e) County Ordinance No. 92-15 codified as Section 2-8.1.2 of the County Code - Employment Drug-free Workplace;
- (f) County Ordinance No. 142-91 codified as Section 11A -29 et. seq. of the County Code – Family Leave;
- (g) County Resolution R-385-95 - Miami-Dade County Disability Nondiscrimination Affidavit, incorporating the following Federal laws and Acts:
  - (1) The Americans with Disabilities Act of 1990 (ADA), Pub.L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. Sections 225 and 611 including Title I, Employment;
  - (2) Title II, Public Services;
  - (3) Title III, Public Accommodation and Services Operated by Private Entities; and Section 504 of the Rehabilitation Act of 1973;
  - (4) Title IV, Telecommunications;
  - (5) Title V, Miscellaneous Provisions: The Rehabilitation Act of 1973, 29 U.S.C. Section 794; The Federal Transit Act, as amended 49 U.S.C. Section 1612; The Fair House Act as amended, 42 U.S.C. Section 3601 - The foregoing requirements of this section shall not pertain to contracts with the United States or any department or agency thereof, or the State or any political subdivision or agency thereof or any municipality of this State;
- (h) Section 2-8.1 (c) of the County Code regarding Delinquent and Currently Due Fees or Taxes

The Grantee has certifiably indicated compliance with these laws, ordinances and resolutions by properly executing the affidavits attached hereto.

Further, all funded activities must provide equal access and equal opportunity in employment and services, and may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation or physical ability, in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Miami-Dade County ordinances No. 97-170, § 1, 2-25-97 and No. 98-17, § 1, 12-1-98.

**14. Remedies:** In the event the Grantee shall fail to materially conform with any of the provisions of the Agreement or its attachments referenced herein, the Director may withhold or cancel all, or any, unpaid installments of the grant upon giving five (5) calendar days written notice to the Grantee, and the County shall have no further obligation to the Grantee under the Agreement. Further, in the event of a material breach of any term or condition of the Agreement, upon five (5) calendar days written demand by the Director, the Grantee shall repay to Miami-Dade County all portions of the grant which have been received by the Grantee, but which have not actually been disbursed by the Grantee as of the date that the written demand is received.

In the event this grant is canceled or the Grantee is requested to repay grant funds because of a breach of the Agreement, the Grantee may be declared permanently ineligible to apply to the Department of Cultural Affairs' grants programs. Reinstating the Grantee's eligibility to apply is also at the Director's sole discretion, and may only be considered subsequent to all deficient areas on prior grants having been addressed to the satisfaction of the Director. Further, the Grantee will be liable to reimburse Miami-Dade County for all unauthorized expenditures discovered after the expiration of the grant period. The Grantee will also be liable to reimburse the County for all lost or stolen grant funds.

Grant funds which are to be repaid to Miami-Dade County pursuant to this Section or other Sections in the Agreement, are to be repaid by delivering to the Director a certified check for the total amount due, payable to the Miami-Dade County Board of County Commissioners.

These provisions do not waive or preclude the County from pursuing any other remedy, which may be available to it under the law.

**15. Indulgence Will Not Be A Waiver of Breach:** The indulgence of either party with regard to any breach or failure to perform any provision of the Agreement shall not be deemed to constitute a waiver of the provision or any portion of the Agreement either at the time the breach or failure occurs or at any time throughout the term of the Agreement.

**16. Written Notices:** Any written notices required under the Agreement will become effective when delivered in person or upon the receipt of a certified letter addressed to the Grantee at the address specified in Article I.1 of the Agreement, and to the Director when addressed as follows: Director, Miami-Dade County Department of Cultural Affairs, 111 NW First Street, Suite 625, Miami, Florida 33128.

**17. Captions Used in the Agreement:** Captions as used in the Agreement are for convenience of reference only and should not be deemed or construed as in any way limiting or extending the language or provisions to which such captions may refer.

**18. Contract Represents Total Agreement:** The Agreement, including its special conditions and attachments, represents the whole and total agreement of the parties. No representations, except those contained within the Agreement and its attachments, are to be considered in construing its terms. Other than as specified in this agreement, no modifications or amendments may be made to the Agreement unless made in writing, signed by both parties, and approved by appropriate action by the Miami-Dade County Board of County Commissioners and Mayor.

### ARTICLE III - INSURANCE

The Grantee must maintain and shall furnish upon request to the Director or his designee, certificates of insurance indicating that insurance has been obtained which meets the requirements as outlined below:

1. Workers Compensation Insurance for all employees of the Grantee as required by Florida Statute 440.
2. Commercial General Liability Insurance in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
3. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the project, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

1. The Company must be rated no less than "B" as to the management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division;  
or,
2. The Company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Insurance, and is a member of the Florida Guaranty Fund.

Certificates must indicate that no modification or change in insurance shall be made without thirty (30) days advance written notice to the certificate holder.

Modification or waiver of any of the aforementioned insurance requirements is subject to the approval of the County's Risk Management Division. The Grantee shall notify the County of any intended changes in insurance coverage, including any renewals of existing policies.

#### ARTICLE IV - TERMINATION

If, for any reason, the Grantee shall fail to fulfill in a timely and proper manner its obligations under the Agreement, or should violate any of the covenants, agreements, or stipulations of the Agreement, the County shall thereupon have the right to terminate the Agreement by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

Notwithstanding the above, the Grantee shall not be relieved of liability to the County by virtue of any breach of the Agreement by the Grantee, and the County may withhold any payments to the Grantee until such time as the exact amount of damages due to the County from the Grantee is determined.

#### ARTICLE V - SPECIAL CONDITIONS

Indirect costs may not be assigned to, charged against or debited from County grant funds.

The grant is awarded to this Grantee with the understanding that the Grantee is performing a public purpose through the programs, projects and services recommended for support. Use of these funds for any program component not meeting this condition will be considered a material breach of the terms of this Grant Agreement and will allow Miami-Dade County to seek remedies including, but not limited to those outlined in the Articles and Exhibits of the Grant Agreement.

Under County Commission resolution R-700-13, **no more than 25% of the Grantee's administrative budget** (i.e., salaries, benefits and fringes for the Grantee's management personnel; general overhead costs; clerical or administrative personnel who do not directly provide the services required pursuant to the Grantee's contract with the County) may be paid from Miami-Dade County General Funds. If the Grantee receives funds from multiple County sources that include Miami-Dade County General Funds, the aggregate total of funds received by the Grantee from all County sources may not be used for more than 25% of the Grantee's administrative budget.

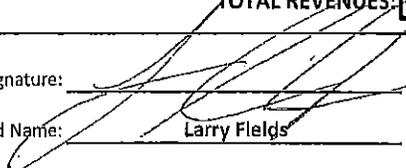
Grant funds may not be used for any of the following types of expenses: proposal preparation; repayment of prior debt or deficit reduction; debts, contingencies, fines and penalties, interest and other financial costs; expenses incurred or obligated prior to or after the grant period; travel or transportation costs to cover expenses for staff travel or presenting programs/activities outside of Miami-Dade County; remuneration of County employees for any services rendered as part of a project receiving a grant through the Department of Cultural Affairs; social/fundraising events; beauty pageants; or sporting events played or hosted outside of Miami-Dade County; income generating events for an organization other than the applicant organization; hospitality costs including private entertainment, food, beverages, decorations or affiliate personnel, with the exception of artists; cash prizes, awards, plaques, or scholarships; re-granting; lobbying the County Commission or the Mayor, the judicial branch, or any public agency or office, nor for propaganda materials; charitable contributions or donations; or events which are restricted to private or exclusive participation (by invitation and/or purchase requirements that exceed the cost of a typical, standard ticket to an event/performance), including restricting access to programs or facilities on the basis of race or ethnicity, color, creed, national origin, religion, age, gender, sexual orientation or physical ability.

Payment(s) of Grant funds under this particular agreement may be made incrementally, if necessary, to the Grantee upon submission by the Grantee and upon approval by the Director of documentation reflecting the authorized expenditure of funds in eligible categories per the Project Budget attached hereto. Documentation shall include, but not be limited to, copies of original invoices, bills, vouchers, receipts, or canceled checks (front and rear) clearly designating payment for expenses associated with the project. Cash transactions are not acceptable. Documentation for credit card transactions must include a copy of the relevant monthly credit card statement highlighting the charge for the expense, and proof of remittance to the credit card issuing company confirming payment made and accepted for the expense incurred. Evidence documenting the expenditure funds under this Agreement must be for distinct programmatic expenses that are not part of the substantiation provided to justify expenses as part of any other grant awarded to the

Grantee covering this same grant period. The Director reserves the right to request original documentation to substantiate grant expenditures, and to request evidence of matching support. Notwithstanding the above, the requirements contained in Article II.6 of this Agreement are unaffected and unchanged by the provisions of this Article V special condition.



**MIAMI-DADE COUNTY DEPARTMENT OF CULTURAL AFFAIRS  
CULTURAL FACILITY GRANT AWARD AGREEMENT PROJECT BUDGET**

REVENUES	TOTAL REVENUES		% of cash revenues
	CASH	IN-KIND	
Admissions			0.0%
Memberships			0.0%
Tuitions/Enrollment Fees			0.0%
Contracted Services: Outside Programs/Performances			0.0%
Contracted Services: Special Exhibition Fees			0.0%
Contracted Services: Other			0.0%
Rental Income			0.0%
Corporate Support			0.0%
Foundation Support			0.0%
Private/Individual Support			0.0%
Other Private Support: Auxiliary Activities			0.0%
Other Private Support: Special Event Proceeds			0.0%
Gov't Grants: Federal (Itemize Below)			0.0%
			0.0%
			0.0%
Gov't Grants: State (Itemize Below)			0.0%
			0.0%
			0.0%
Gov't Grants: Local (Not Dept of Cultural Affairs Grants)			0.0%
			0.0%
			0.0%
			0.0%
Gov't Grants: The Children's Trust (Direct Funding)			0.0%
Merchandise/Concession/Gift Shop Revs			0.0%
Investment Income (Endowment)			0.0%
Interest and Dividends			0.0%
Cash on Hand			0.0%
Other Revenues (Itemize Below)			0.0%
			0.0%
			0.0%
			0.0%
			0.0%
			0.0%
Department of Cultural Affairs Grants (Itemize below) <small>(Do Not include this contract's grant award here.)</small>			0.0%
			0.0%
			0.0%
			0.0%
			0.0%
<i>Subtotals: CASH Revenues / In-Kind:</i>		\$ - \$ -	
<b>GRANT AWARD AMOUNT:</b>	<b>Cultural Facility Award</b>	\$ 379,000	Grant Award % of cash revenues 100.0%
	<i>Subtotal: Cash Revenues + Grant Award:</i>	\$ 379,000	
	<b>TOTAL REVENUES:</b>	\$ 379,000	Surplus/Deficit in-kind % \$ - 0.0%
<b>Authorizing Official:</b>			
Signature: 	Date: 4/15/16		
Typed/Printed Name: Larry Fields	Title: Producing Artistic Director		



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** July 6, 2016

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 8(C)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's , 3/5's , unanimous  ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Veto \_\_\_\_\_

Override \_\_\_\_\_

Agenda Item No. 8(C)(1)

7-6-16

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING WAIVER OF FORMAL BID PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND SECTION 2-8.1(B) OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT TO APPROVE AN OPERATING AND MANAGEMENT AGREEMENT WITH FANTASY THEATRE FACTORY, INC. FOR THE MANAGEMENT AND OPERATION OF THE NW 7TH AVENUE THEATER; APPROVING A \$379,000.00 GRANT AWARD AGREEMENT TO FANTASY THEATRE FACTORY, INC. FOR OPERATIONAL SUPPORT FOR THE THEATER TO BE FUNDED FROM THE DEPARTMENT OF CULTURAL AFFAIRS' PROPRIETARY FUNDS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH CONTRACTS AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

**Section 1.** The foregoing recitals are incorporated in this resolution and are approved.

**Section 2.** This Board hereby authorizes a waiver of formal bid procedures pursuant to Section 5.03(D) of the County Home Rule Charter and Section 2-8.1(b) of the Code of Miami-Dade County, Florida by a two-thirds vote of the Board members present to approve the Operating and Management Agreement between Miami-Dade County and Fantasy Theatre Factory, Inc. in substantially the form attached to the accompanying memorandum as Attachment 1 and made a part hereof.

**Section 3.** This Board hereby approves the Grant Award Agreement to Fantasy Theatre Factory, Inc., in substantially the form attached to the accompanying memorandum as Attachment 2 and made a part hereof, in the amount of \$379,000.00 to be funded from the Department of Cultural Affairs' proprietary funds.

**Section 4.** This Board authorizes the County Mayor or County Mayor's designee to execute such contracts and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

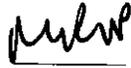
The Chairperson thereupon declared the resolution duly passed and adopted this 6<sup>th</sup> day of July, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Monica Rizo Perez